

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 93-0873 CSET
Controlled Substance Excise Tax
For Tax Periods: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

Authority: IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana (1995)(Indiana Supreme Court).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested on October 8, 1993 for the possession of Marijuana. A Jeopardy Finding, Jeopardy Assessment Notice and Demand was issued on October 12, 1993. On October 18, 1993 Taxpayer protested the Controlled Substance Excise Tax. A hearing on this matter was scheduled for June 23, 1998 in room N248 of the Indiana Government Center North at 10:00 a.m. Taxpayer was notified of the hearing by U.S. mail at the Taxpayer's last known address.

Controlled Substance Excise Tax-Double Jeopardy.

DISCUSSION

Since Taxpayer did not appear at the hearing or offer any written information in lieu of a hearing, the Department has to rely on the contents of the file in making a decision on the matter. IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of Marijuana in the State of Indiana. The

Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana (1995)(Indiana Supreme Court). In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand put Taxpayer at risk of punishment or in jeopardy on October 12, 1993. There is no evidence in the file as to when Taxpayer was put in jeopardy in the criminal proceeding relating to this possession of controlled substances. It is reasonable to assume, however, that the criminal jeopardy didn't attach until more than four days after the arrest when the Controlled Substance Excise Tax jeopardy attached. Therefore the Department's jeopardy assessment was the first and constitutionally permissible jeopardy in this situation.

FINDING

Taxpayer's protest is denied.